IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 884 OF 2007
WITH
CRIMINAL WRIT PETITION NO. 885 OF 2007

Abhay Prabhakar Lele ..Petitioner

Vs.

Raosaheb Mahaveer Chimanna
and anr. ..Respondents

Mr. A.M. Kulkarni for petitioner.
Mr. S.S. Patwardhan for respondent no.1.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : October 10, 2007.

P.C.:

1. Heard Mr. Kulkarni the learned counsel for the petitioner and Mr. Patwardhan the learned counsel for the private respondent who is the complainant before the trial court. The learned APP appears for the State.

2. The complainant has filed two separate criminal complaints under Section 138 of the

Negotiable Instruments Act, 1881 for dishonour of cheques against the petitioner i.e. S.C.C. No. 1974/05 and S.C.C. No. 1973/05. In S.C.C. No. 1974/05 the dishonoured cheque was bearing No.541862 dated 30/5/2005 and in the sum of Rs.9,00,000/-, whereas in the second complaint i.e. S.C.C. No.1973/05 the dishonoured cheque was bearing No.002600 dated 30/5/2005 and in the sum of Rs.3,00,000/-.

3. On the learned Magistrate passing the order of issuance of process, the petitioner filed separate applications in both the cases for quashing the said order and the applications came to be dismissed. He, therefore, filed Criminal Revision Application Nos.24 and 25 of 2007 and both of them came to be dismissed on 7/4/2007.

4. Mr. Kulkarni submitted that the learned Sessions Judge proceeded to dismiss the revision applications solely on the ground that the applications filed at Exhs.19 and 20 before the trial court were not maintainable as the accused had no

right to ask for discharge. The learned Sessions Judge further observed that the order of issuance of process was not challenged and Mr. Kulkarni has pointed out that a specific prayer made in the application at Exhs. 19 and 20 as well as in the revision petition memos praying for quashing of the order of issuance of process. He, therefore, urged that the Criminal Revision Applications be restored to file and the learned Sessions Judge be directed to decide the said revision applications de novo.

5. Admittedly, the complainant had signed an agreement for development on 13/3/2005 with the accused who was given the rights of development and on the same day the General Power of Attorney was also executed in his favour. On signing of the agreement he immediately parted with two cheques in the sum of Rs.9,00,000/- each towards the consideration for signing the development agreement. It appears on 7/7/2005 the Public Works Department of the State Government had raised some objections regarding the Northern boundary of the property under development and a stop work notice was issued by the Sangali

Municipal Corporation on 26/7/2005. Finally the PWD issued the NOC on 30/9/2005. However, the cheques deposited were bounced and the complainant had issued demand notice on 13/10/2005. In the meanwhile the complainant revoked the development agreement on or about 3/10/2005. For all these reasons it was submitted by Mr. Kulkarni that even prima facie there was no case of any debt or legally enforceable liability as against the dishonoured cheques and on termination of the contract the accused did not owe any money to the complainant. These are all matters which will have to be gone into by the trial court after the evidence that the parties may adduced before the trial court (oral as well as documentary). Section 138 of the Negotiable Instruments Act, 1881 provides for presumptions in favour of the complainant unless contrary is proved by the accused either by adducing his own evidence or by cross-examining the complainant. Existence of a debt or legally enforceable liability is a mixed question of fact and law and, therefore, the same will have to be decided on the basis of the evidence that the parties may adduce before the trial court. On such disputed

ground of the non existence of debt or legally enforceable liability, the inherent powers under Section 482 of Cr.P.C. cannot be invoked so as to quash the proceedings.

6. In the premises, these petitions fail and the same are hereby rejected summarily.

7. Undoubtedly, the pending complaints will have to be decided on their own merits and without being influenced by any observations made in this order.

(B.H. Marlapalle,J.)